IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 508 of 1988

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAJANAND HARIBHAI MOHITE

Versus

BHIKHUBHAI KHANDUBHAI DESAI

Appearance:

MRS. SHILPA UNWALA for MR YN OZA for Petitioners

MR UTPAL PANCHAL for MR DD VYAS for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the tenants (original defendants).

2. The respondent-landlord sued the tenants for a decree of eviction under the provisions of the Bombay Rent, particularly on the ground that the

defendants were tenants who were in arrears of rent for more than six months and inspite of service of statutory notice, had failed to meet the demand.

3. The trial court, after consideration of the pleadings of the parties, framed the appropriate issues and on a total consideration of the evidence on record, dismissed the suit of the landlords.

4. The landlord thereupon preferred an appeal under section 29(1) of the Bombay Rent Act.

5. The appellate court, after reappreciation of the entire evidence on record, was pleased to reverse the judgement and decree of the trial court and passed a decree for eviction in favour of the plaintiff-landlord and against the defendants-tenants.

6. Hence the present revision under section 29(2) of the Bombay Rent Act.

7. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

8. Only a few salient features require to be noted.

9. The statutory notice given by the landlord to the tenant is on record at Exh.29, whereas the reply of the tenants is at Exh.34.

10. It is pertinent to note that the tenants had not raised any dispute as to standard rent in their reply to the suit notice Exh.34 or even in their written statement

at Exh.10.

11. The substantial dispute raised by the tenants was only on questions of fact and not on a question of principle. The tenants contended that they had incurred certain expenses for maintenance and repair of the property with the consent of the landlord and on this aspect the defendants attempted to prove the expenses which they had incurred on the property. The tenants' further contention was also to the effect that the balance of the rent due was paid by issuance of cheques. It is the specific case of the defendants, which is also brought out by way of an admission in the cross-examination of the defendants, that no payment towards rent was made in cash.

12. Even assuming for the sake of argument that the entire case on facts put up by the defendants is established, that they have in fact incurred the expenses which they claim to have incurred in respect of the property, and after giving credit for the rent paid by the various cheques in question, it remains an admitted position that on the date of the suit notice the tenants were in arrears of rent amounting to Rs.1286/-. This admission viz. that arrears amounted to Rs.1286/-, is even otherwise obvious from the defendants' written statement at Exh.10 read with the defendants' deposition in the suit. Once this quantum of arrears is computed against the monthly rent of Rs.50/- per month bearing in mind that there is no dispute as to standard rent, it becomes obvious that the arrears are of more than six months. It is, therefore, found by the lower appellate court and rightly so that when there is no dispute as to standard rent, that there is no dispute that the rent is payable by the month, and in case the arrears are of more than six months, section 12(3)(a) of the Act would apply.

12.1 Once we find that section 12(3)(a) of the Act applies to the facts of the case, as rightly found by the lower appellate court, the only protection conferred upon the tenant by the Rent Act is when the tenant meets the demand made by the landlord within 30 days of the receipt of the statutory notice. Admittedly the defendants-tenants have not met the demand within 30 days of the receipt of the statutory notice, or even paid the amount which was admittedly due.

12.2 The lower appellate court was, therefore, completely justified in passing a decree of eviction against the defendants-tenants under section 12(3)(a) of the Rent Act. The fact that the lower appellate court

also considered the case under section 12(3)(b) makes no difference. Even otherwise, even on the application of section 12(3)(b) of the Act, the lower appellate court has found against the defendants.

13. Thus, the tenants have lost the protection of the Act and consequently the lower appellate court had no discretion in the matter and was obliged to pass a decree for eviction.

14. In the premises aforesaid, I find that there is no justification for interference with the judgement and decree of the lower appellate court. There is no substance in the present revision and the same is, therefore, dismissed. Rule is discharged with no order as to costs.

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